



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Elijah James,
Irvington

CSC Docket No. 2018-3595

Request for Interim Relief

ISSUED: OCTOBER 5, 2018 (SLK)

Elijah James, a Police Lieutenant with Irvington, represented by Kara A. Mackenzie, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his 15 working day suspension without pay commencing on May 11, 2018.

By way of background, on December 21, 2017, the petitioner was issued a Preliminary Notice of Disciplinary Action (PNDA) charging him with the violation of certain administrative policies for an incident that took place on September 29, 2017. A department hearing was held on March 22, 2018 and the Hearing Officer found the petitioner guilty of failing to monitor his subordinates and recommended that he be suspended for 30 working days without pay. However, the Hearing Officer recommended that 15 of the 30 days be held in abeyance (the held suspension) for one year only to be imposed for any subsequently sustained violation involving major discipline. On March 30, 2018, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) adopting the Hearing Officer's recommendations and the petitioner served a 15 working day suspension without pay from April 12, 2018 to May 2, 2017. The petitioner then appealed this suspension to the Commission, which transmitted the matter to the Office of Administrative Law (OAL) as a contested case. Then, while serving the 15 working day suspension, the petitioner was issued a second PNDA for an incident on March 17, 2018. He presents that the appointing authority imposed the held suspension against him, which he served from May 11, 2018 through May 31, 2018, due to the

issuance of the second PNDA.¹ The petitioner states that a departmental hearing was scheduled for May 22, 2018, which the appointing authority adjourned on the date of the hearing, and a new date was never scheduled. On May 24, 2018, the petitioner filed the subject request for interim relief.

In his request for interim relief, the petitioner argues that it was premature for him to have served the held suspension as the charges for the March 17, 2018 incident have not yet been sustained as there has been no departmental hearing nor has a FNDA sustaining major discipline against him for this incident been issued. He presents that prior to a major discipline being imposed, civil service rules require that he be afforded the opportunity to have a departmental hearing within 30 days of the issuance of a PNDA and within 20 days of that hearing, the appointing authority shall make a decision on the charges and issue a FNDA. The petitioner asserts that after a departmental hearing, the charges for the second PNDA could be completely dismissed or sustained for only minor discipline. In either event, he would not have needed to serve the held suspension. Therefore, the petitioner requests back pay for his suspension from May 11, 2018 through May 31, 2018. Additionally, the petitioner requests counsel fees for this application as his immediate suspension was not warranted. He indicates that on May 2, 2018, his counsel wrote a letter to the appointing authority explaining that the held suspension should not be served until after a departmental hearing and charges for the second PNDA were sustained imposing major discipline. Additionally, the petitioner indicates that his counsel telephoned the appointing authority's attorney on two separate occasions and was advised that his attorney's correspondence was forwarded to the Police Director. However, as of May 24, 2018, his attorney had not heard from the Police Director.

Although given the opportunity, the appointing authority did not submit a response in this matter.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

¹ Although official personnel records do not indicate any suspensions for the petitioner, the petitioner submits a Suspension Order from the appointing authority to demonstrate that he served the held suspension from May 11, 2018 to May 31, 2018.

N.J.A.C. 4A:2-2.5 provides that an employee must be served a PNDA setting forth the charges and statement of facts supporting the charges (specifications), and be afforded the opportunity for a hearing prior to imposition of major discipline.

N.J.A.C. 4A:2-2.5(a)1 and 2 provide that an employee may be suspended immediately and prior to a hearing when the employee has been formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job, or where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services.

N.J.A.C. 4A:2-2.5(d) provides that a departmental hearing, if requested, shall be held within 30 days of the PNDA unless waived by the employee or a later date as agreed by the parties.

N.J.A.C. 4A:2-2.6(d) provides that within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee a FNDA.

In reviewing this matter, it is not necessary to address the merits of the charges against the petitioner. Rather, the issue to be determined is whether the appointing authority had a valid reason for the petitioner to serve the held suspension prior to holding a departmental hearing for the charges on the second PNDA and without issuing a FNDA that imposed major discipline.

In this matter, it is clear that the appointing authority's immediate implementation of the held suspension on the issuance of a second PNDA without a departmental hearing was premature. The held suspension was only to be served upon a finding that the petitioner had committed an offense that warranted major discipline. However, there has been no such finding as a departmental hearing could have led to something other than major discipline. Further, the appointing authority has not presented any evidence that an immediate suspension without a hearing was warranted.

As to the petitioner's request for back pay, the Commission finds that this request is premature as it is unknown as to whether the petitioner will prevail on the substantive issues in this matter until a departmental hearing is held and a FNDA is issued. It would be nonsensical to award the petitioner back pay now only to find that after the departmental hearing, the appointing authority determines that major discipline is warranted for the charges concerning the second PNDA. In this regard, the only harm the petitioner is currently undergoing is monetary in nature, which can be remedied should his pending matter result in less than major discipline. As to counsel fees, the petitioner indicates that the departmental

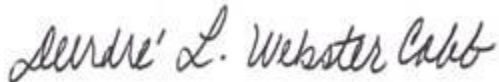
hearing was scheduled for May 22, 2018, which the appointing authority adjourned on the date of the hearing. There is no evidence in the record concerning the circumstances for this adjournment. Further, as this request was filed on May 24, 2018, just two days after the adjournment, there is no evidence that the petitioner made efforts to have the hearing rescheduled before filing this request or that the appointing authority was refusing to hold a departmental hearing or otherwise engaging in improper or invidious behavior. Therefore, the request for counsel fees is denied. *See N.J.A.C. 4A:2-1.5.*

Based on the above, the Commission orders the appointing authority to schedule a departmental hearing that shall take place within 30 days of the issuance date on this decision. Additionally, the appointing authority shall issue a FNDA within 20 days of the hearing. Should major discipline not be imposed, the Commission orders that the petitioner receive 15 working days of back pay, benefits and seniority. Moreover, the appointing authority is warned that if it fails to comply with this order, the petitioner may file a request for enforcement and the appointing authority shall be subject to fines or other penalties pursuant to *N.J.A.C. 4A:10-2.1.*

ORDER

Therefore, it is ordered that the petitioner's request for interim relief is granted in part.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3rd DAY OF OCTOBER, 2018



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